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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,670	11/10/2003	Satoshi Mizutani	20050/0200468-US0	4676

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EXAMINER
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GIBSON, KESHIA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/705,670	<b>Applicant(s)</b> MIZUTANI ET AL	
	<b>Examiner</b> Keshia Gibson	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) 17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/15/05</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 4/29/05 have been fully considered but they are not persuasive. Applicant has argued:

1) Osborn, III et al. does not disclose that the side edges of the interlabial pad body extend beyond the side edges of the interlabial flaps because they are integral with the absorbent body structure. However, the claim language does not require that the flaps be "a separate structure" from that of the absorbent structure, only that the pair of flap portions be provided on the pad body.

2) The longitudinal side edges or their vicinity do not have any adhesive because the adhesive is provided at the end edges and not the longitudinal edges of the pad. However, vicinity has been interpreted to mean "a surrounding or nearby region." The end edges, having an adhesive, are near the longitudinal edges; as such, the pad has an adhesive in the vicinity of the longitudinal edges.

3) The rejection of Claim 11 does not stand because the rejection of Claim 1 does not stand. See response point 1.

4) There is no motivation to combine the teachings of Hasewaga with the teachings of Osborn, III et al. since a sanitary pad and an interlabial pad have different structures and because Hasewaga is meant to be attached to an undergarment while Osborn, III et al. is to be attached to the wearer's skin. However, both Hasewaga and Osborn, III et al. are analogous art because they are feminine products that are meant to be positioned to absorb vaginal discharge; furthermore, both articles deal with the

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use of adhesive to improve the position in the article in relation to the wearer. One of ordinary skill would still be motivated to combine the two references as cited in the previous action.

5) That Weirlacher is silent to a pair of flaps so the teachings of Weirlacher do not render Claim 7 of the claimed invention. However, Weirlacher does need not have flaps in order to motivate one skilled in the art to Osborn, III et al. to have a mini-sheet piece provided on the article.

Despite applicant's arguments, Osborn, III et al., Hasegawa, and Weirlacher are still considered to anticipate or render obvious limitations set forth in Claims 1-7 and 11-15 of the claimed invention, as presented in the previous Office Action (which has been modified and presented again, in view of applicant's amendments, below).

2. The indicated allowability of claims 6-8 and 16 is withdrawn in view of the newly discovered reference(s) to Lichstein (WO 00/40197). Rejections based on the newly cited reference(s) follow.

### ***Claim Objections***

3. Claim 8 is objected to because of the following informalities: "the minisheet piece" of line 9 lacks proper antecedent basis; it is suggested that "the" be changed to "a". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 6 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborn, III et al. (US 5,885,265).

In regard to Claim 1, Osborn, III et al. disclose an interlabial pad having an absorbent pad body 32 (in area of pad marked interlabial portion of pad in Fig. B below) and a pair of flaps F (comprising surface side sheet and backside sheet) extending beyond each side of the pad body (Figs. A-C below; column 4, lines 20-30; column 14, lines 22-45). The pad body has a surface side sheet 28 and backside sheet 30 bonded together at peripheral edges to enclose the absorbent body (Fig. 1; column 4, lines 20-30). The flaps may be provided with an adhesive portion on the skin-contacting surface (Figs. A-C; column 5, lines 39-41; Figure 1; column 15, lines 44-59).



**Fig. 6**

Fig. A: Original Figure 6 from prior art.

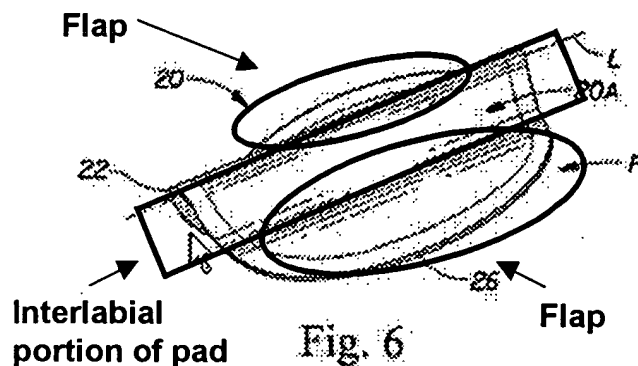


Fig. B: Examiner's mark up of analogous elements in prior art.

In regard to Claim 2, as seen in Fig. B above, the pair of flaps is provided at part or almost all parts of each side edge of both sides of the interlabial pad.

In regard to Claim 6, the interlabial pad comprises a water-permeable surface on the body side sheet **28** (column 11, lines 48-51; Figure 1) and a water-impermeable back side sheet **30** (column 8, lines 32-38; Figure 1). The body side sheet and the back side sheet have length and width dimensions greater than that of the absorbent core and are connected to each other (column 15, lines 60- column 16, line 44).

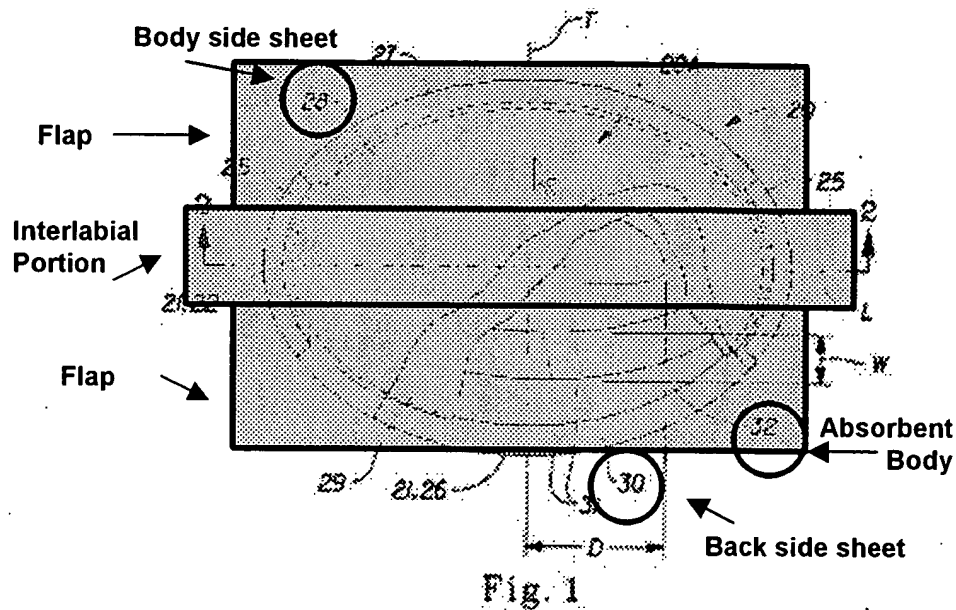


Fig. C: Examiner's identification of flap and interlabial portions in relation to Fig. 1 of the prior art.

Thus, as can be seen in Figure C above, the flap portions are composed of equally extended parts of both the body side sheet and the back side sheet.

In regard to Claim 12, Osborn, III et al. disclose a longitudinal ridge along the centerline of the interlabial pad that forms the interlabial absorbent structure, thus the interlabial pad comprises a long convex area extending in a longitudinal direction on the body side sheet (Figure 6; column 14, lines 22-45).

In regard to Claim 13, Osborn, III et al. do not disclose that the pad is used with a sanitary pad. However, it has been held that a recitation of the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from prior art satisfying the claimed structural limitations.

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In regard to Claims 14 and 15, Osborn et al. disclose that the interlabial pad is directed toward catamenial devices, incontinence pads, or the like (column 1, lines 10-15). (Also see discussion for Claim 13.)

5. Claims 8-10 rejected under 35 U.S.C. 102(b) as being anticipated by Lichstein (WO 00/40197).

In regard to Claim 8, Lichstein discloses an interlabial pad 400 comprising an absorbent interlabial pad body B, a pair of flap portions F, an adhesive 401, and a minisheet piece 300 (Figs. 17a-f; Fig. D below). The minisheet 300 has a length longer than a lateral dimension of the absorbent body B and is attached to the body side face 201 by crossing the pad body B in the lateral direction (Figs. 17a-f; Fig. D below; page 9, line 33-page 10, line 23; page 8, lines 6-8). The flap portions F are formed by parts of the minisheet piece protruding from the side edges of the pad body B in a longitudinal direction (Fig. D; page 9, line 33-page 10, line 23).

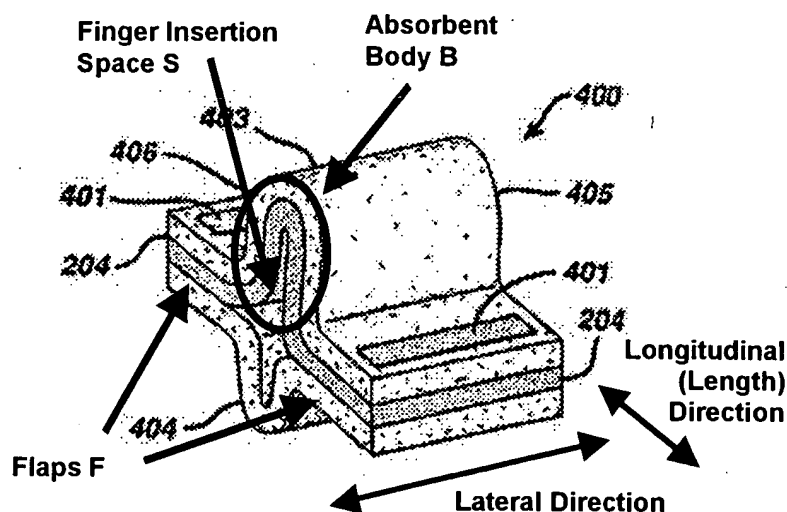


Fig. D: Examiner's markup of Lichstein's Fig. 17f .



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In regard to Claim 9, the minisheet 300 forms a finger insertion opening S, which lies between the minisheet 300 and the opposite side face of the body side face 201 (Figs. 17a-f, Fig. D).

In regard to Claim 10, the minisheet 300 is water impermeable material (page 9, line 33- page 10, line 23).

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn, III et al.

In regard to Claim 11, Osborn et al. disclose the claimed invention except for the adhesive portion having a separation strength of 0.3 to 2.0 N and a shear strength of 0.5 to 15.0 N (column 15, lines 43-59). However, Osborn et al. do teach an adhesive strong enough to adhere to the wearer's skin. Shear strength and separation strength

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affect the adhesion strength of the adhesive and is therefore a result effective variable.

Thus, it would have been obvious to one of ordinary skill in the art to provide the adhesive portion of Osborn, III et al. with a separation strength of 0.3 to 2.0 N and a shear strength of 0.5 to 15.0 N since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

9. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn, III et al. in view of Hasegawa (WO 98/25561).

In regard to Claims 3-4, Osborn, III et al. disclose the claimed invention except for the interlabial pad comprising another pair of flap portions at each side edge of both sides and being at a position biased towards either end portion in a longitudinal direction of the interlabial pad. Hasegawa discloses an absorbent pad **20** having two pair of adhesive side flaps **47**. Hasegawa teach providing the additional pair of side flaps **47** at the back of the pad **20** in order to cover the back region of the wearer's undergarment, thereby preventing the soiling of the back region of the wearer's undergarment (page 3, lines 24-30). Therefore one would be motivated to modify the article of Osborn, III et al. by adding an additional pair of flaps biased toward either end portion of the pad in the longitudinal direction as taught by Hasegawa since doing so would prevent soiling of the rear region of the wearer's undergarments. Thus, it would have been obvious to one of ordinary skill in the art of absorbent sanitary articles to modify Osborn, III et al. by adding an additional pair of flaps as taught by Hasegawa.

In regard to Claim 5, Osborn, III et al. disclose the claimed invention except for partially extensible flap portions. Again, Hasegawa discloses an absorbent pad **20** having two pair of adhesive side flaps **24**. Hasegawa teaches extensible flaps to relieve the stresses of folding (bending) them (page 10, lines 11-17). Therefore, one would have been motivated to modify Osborn, III et al. to provide for partially extensible flap portions as taught by Hasegawa since doing so would relieve the stresses that result from bending or folding the flaps. Thus, it would have been obvious to one skilled in the art of sanitary pads to modify Osborn, III et al. to have partially extensible flaps as taught by Hasegawa since doing so would relieve the stresses caused by bending the flaps.

10. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Osborn, III et al. in view of Wierlacher (WO 99/01093).

In regard to Claim 7, Osborn, III et al. disclose the claimed invention except for the pad having a minisheet piece which forms a finger insertion opening on a surface opposing the body side sheet of the pad. Wierlacher teaches a pad comprising a minisheet piece **58** that forms a finger breadth opening **66** and a finger insertion space continuing therefrom **64**. The minisheet piece **58** is attached to the garment-facing surface **23**, which is opposite the body side sheet **22** (Figures 5b and 7; page 18, line 30- page 21, line 6). One would have been motivated to modify the article of Osborn, III et al. to provide for a minisheet piece attached to the garment-facing surface, as taught by Wierlacher since doing so would provide a finger insertion place to aid in application or removal of the article. Thus, it would have been obvious to modify the article of

Osborn, III et al. to provide for a minisheet piece as taught by Wierlacher since doing so would provide a finger insertion place to aid in application or removal of the article.

11. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lichstein in view of Osborn, III et al. (WO 99/26575).

In regard to Claims 16, Claim 16 requires that the pad meet the limitations of Claim 1. In view of the discussion of Lichstein in regard to Claim 8, Lichstein is considered to meet the limitations of both Claims 1 and 7. However, Lichstein does not expressly disclose that the flap portions are detachably fixed to the inner surface of a wrapper. Osborn, III et al. disclose a package for an interlabial pad; the pad comprises an adhesive and may be attached to the inner surface of the wrapper (page 22, lines 7-17; page 17, line 12-page 22, line 17). Osborn, III et al. teach that cover the pad with a wrapper protects the pad, as well as the adhesive, from contamination prior to use (page 2, line 15-page 3, line 3; page 17, line 12-page 22, line 17). Therefore, one of ordinary skill in the art would be motivated to modify the article of Lichstein by providing a wrapper to be detachably connected to the adhesive flaps of the article since doing so would protect both the adhesive and the article from contamination prior to use. Thus, it would have been obvious to one of ordinary skill in the art to modify the article of Lichstein to provide for a wrapper detachably connected to the pad as taught by Osborn, III et al. since doing so would protect both the adhesive and the article from contamination prior to use.

***Allowable Subject Matter***

12. Claims 17-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

A search of the prior art of record failed to teach or fairly or suggest alone or in combination a wrapper for a labial pad having flaps 1) wherein the pad flaps are connected to the wrapper in such a manner as to result in the opening of a finger insertion space or 2) having a series of folded, overlapping wrapping sheets detachably connected to the pad flaps.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson  
Examiner, Art Unit 3761

klg 7/19/05

**TATYANA ZALUKAEVA**  
**PRIMARY EXAMINER**

 08/03/05